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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

NORRIS LEE,

Plaintiff and Appellant,

v.

RAUL LOPEZ et al.,

Defendants and Respondents.

F071134

(Super. Ct. No. 11C0266)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kings County. James LaPorte, Judge.

Norris Lee, in pro. per., for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Jonathan L. Wolff, Assistant Attorney General, and Thomas S. Patterson, Deputy Attorney General, for Defendants and Respondents.

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Plaintiff Norris Lee appeals from a judgment of dismissal entered on the ground that his complaint against three prison officials was not filed within six months after the

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\* Before Poochigian, Acting P.J., Franson, J. and Peña, J.

denial of his claim under California's Government Claims Act. (Gov. Code, § 810 et seq.; see Gov. Code, § 945.6.)<sup>1</sup> Lee, a self-representing litigant who was in prison when he attempted to file his complaint, argues the complaint should be deemed timely filed because he submitted it to prison officials for mailing well within the six-month limitation period. (See *Moore v. Twomey* (2004) 120 Cal.App.4th 910, 918 [under prison-delivery rule, civil complaint by a pro per prisoner litigant is deemed filed when it is delivered to prison authorities for forwarding to the superior court].)

In its respondent's brief, the Attorney General states that the defendant correctional officials "concede that their motion for judgment on the pleadings should not have been granted, and that this case should be reversed and remanded." The Attorney General asserts that, at the pleading stage, Lee's allegations about the delivery of his complaint to prison staff were enough to fall within the prison-delivery rule. As to the scope of remand, the Attorney General contends the factual question of whether Lee delivered his complaint to prison officials within the limitations period warrants further factual development and can be resolved in an evidentiary hearing limited to the timeliness issues.

We agree with the Attorney General that the prison-delivery rule will render Lee's complaint timely if the factual dispute about when Lee delivered his complaint to prison staff is resolved in his favor. (*Moore v. Twomey, supra*, 120 Cal.App.4th at p. 918; see *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106 [prison-delivery rule applied to a self-represented prisoner's filing of a notice of appeal in a civil case].) The further proceedings necessary to resolve this dispute are committed to the discretion of the superior court, which may decide to adopt the Attorney General's suggestion and hold an evidentiary hearing limited to the statute of limitations issues. (See Code Civ. Proc.,

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<sup>1</sup> The Government Claims Act once was referred to as the "Tort Claims Act." (See *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 741.)

§ 128, subd. (a)(3); *Butler v. State* (Tenn. 2002) 92 S.W.3d 387, 390 [evidentiary hearings may be used to resolve disputes involving the prison mailbox rule].)

### **DISPOSITION**

The judgment is reversed. The superior court is directed to (1) vacate its order granting defendants' motion for judgment on the pleadings, (2) enter a new order denying that motion, and (3) conduct further proceedings consistent with this opinion and the trial court's discretionary authority under Code of Civil Procedure section 128. Plaintiff shall recover his costs on appeal.